

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

2006 APR 20 PM 3:31
W

RUTH RIVERA GARZA, INDIVIDUALLY	§	
AND AS EXECUTRIX OF THE ESTATE OF	§	
JIMMY M. GARZA, DECEASED, AND AS	§	
NEXT FRIEND OF JIMMY JUNIOR GARZA,	§	
STEFFANE MARIE GARZA, AND JOE	§	
ANGEL GARZA and GEORGIA RIVERA	§	
GARZA	§	CIVIL ACTION NO.
	§	A 05 CA 264 SS
Plaintiffs	§	
	§	
VS.	§	
	§	
THE UNITED STATES OF AMERICA	§	
	§	
Defendant	§	

JOINT MOTION TO APPROVE MINOR SETTLEMENT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, RUTH RIVERA GARZA, INDIVIDUALLY AND AS EXECUTRIX OF THE ESTATE OF JIMMY M. GARZA, DECEASED, AND AS NEXT FRIEND OF JIMMY JUNIOR GARZA, STEFFANE MARIE GARZA, AND JOE ANGEL GARZA and GEORGIA RIVERA GARZA, (herein after "Plaintiffs") and THE UNITED STATES OF AMERICA, (herein after "Defendant) and files this their Motion to Approve Minor Settlement and would show as follows:

I.

On or about February 6, 2006, the parties attended a mediation in this case. At the mediation, a settlement was reached.

II.

The terms of the settlement are set out in Exhibit 1 to this motion.

Because two minor children are involved, the parties hereby ask the Court to approve the settlement agreement. By his signature below, the guardian ad litem indicates his agreement to this motion.

WHEREFORE, PREMISES CONSIDERED, the parties request that this Honorable Court grant this their Joint Motion to Approve Minor Settlement.

RESPECTFULLY SUBMITTED,

**WHITEHURST, HARKNESS, OZMUN
& BREES, P.C.**

1122 Colorado Street, 24th Floor
P.O. Box 1802
Austin, TX 78767
(512) 476-4346
(512) 476-4400 Facsimile

By _____


SCOTT OZMUN
State Bar No. 15392740

ATTORNEYS FOR PLAINTIFFS

By: _____

R. BARRY ROBINSON
Assistant United States Attorney
Arkansas Bar No. 85206
816 Congress Ave., Suite 1000
Austin, Texas 78701
(512) 916-5858
(512) 916-5854 Facsimile

ATTORNEY FOR DEFENDANT

II.

The terms of the settlement are set out in Exhibit 1 to this motion.

Because two minor children are involved, the parties hereby ask the Court to approve the settlement agreement. By his signature below, the guardian ad litem indicates his agreement to this motion.

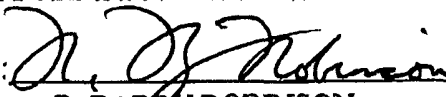
WHEREFORE, PREMISES CONSIDERED, the parties request that this Honorable Court grant this their Joint Motion to Approve Minor Settlement.

RESPECTFULLY SUBMITTED,

**WHITEHURST, HARKNESS, OZMUN
& BREES, P.C.**
1122 Colorado Street, 24th Floor
P.O. Box 1802
Austin, TX 78767
(512) 476-4346
(512) 476-4400 Facsimile

By _____
SCOTT OZMUN
State Bar No. 15392740

ATTORNEYS FOR PLAINTIFFS

By:  _____
R. BARRY ROBINSON
Assistant United States Attorney
Arkansas Bar No. 85206
816 Congress Ave., Suite 1000
Austin, Texas 78701
(512) 916-5858
(512) 916-5854 Facsimile

ATTORNEY FOR DEFENDANT

By: 

PRICE AINSWORTH

State Bar No. 00950300

Law Offices of Price Ainsworth

48 East Ave.

Austin, TX 78701

(512) 474-6061

(512) 474-1605 Facsimile

GUARDIAN AD LITEM

CERTIFICATE OF SERVICE

I hereby certify by my signature above that a true and correct copy of the above and foregoing instrument has been served on all opposing counsel, on this the 20th day of April, 2006, as follows:

R. Barry Robinson
ASSISTANT UNITED STATES ATTORNEY
816 Congress Ave., Suite 1000
Austin, Texas 78701
ATTORNEYS FOR DEFENDANT,
THE UNITED STATES OF AMERICA

via CM/RRR

Price Ainsworth
Law Offices of Price Ainsworth
48 East Ave.
Austin, TX 78701
GUARDIAN AD LITEM

via CM/RRR

EXHIBIT “1”

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

RUTH RIVERA GARZA, Individually
And As Executrix of the Estate of
JIMMY GARZA, DECEASED, And As
Next Friend of JIMMY JUNIOR GARZA,
STEFFANE MARIE GARZA, and JOE
ANGEL GARZA and GEORGIA RIVERA
GARZA,

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendant.

Civil Action No. A-05-CA-264-SS

**STIPULATION FOR COMPROMISE SETTLEMENT AND RELEASE OF
FEDERAL TORT CLAIMS ACT CLAIMS PURSUANT TO 28 U.S.C. § 2677**

IT IS HEREBY STIPULATED AND AGREED, by and between Ruth Rivera Garza, Individually and as Executrix of the Estate of Jimmy Garza, Deceased, and as Next Friend of Jimmy Junior Garza, Steffane Marie Garza, and Joe Angel Garza, and Georgia Rivera Garza, Plaintiffs, and the United States of America, Defendant, by and through their respective attorneys, as follows:

1. The parties do hereby agree to settle and compromise each and every claim of any kind, whether known or unknown, arising directly or indirectly from the acts or omissions that gave rise to the above captioned action under the terms and conditions set forth in this Settlement Agreement.
2. This Stipulation For Compromise Settlement and Release is not, is in no way intended to be, and should not be construed as, an admission of liability or fault on the part of the United States of America, its agencies, agents, servants or employees, and it is specifically denied that the United States is liable to Plaintiffs. This settlement is entered into by the parties for the purpose of compromising disputed claims under the Federal Tort Claims Act and avoiding the expenses and risks of further litigation.

3. The United States agrees to pay the undersigned plaintiffs the cash sums set forth below in 3(a) and to purchase the annuity contract described below in paragraph 3(b).

(a) As soon as it is practicable after the execution of this Stipulation for Compromise Settlement and Release, the United States will pay by wire transfer to the STRUCTURED FUNDING GROUP, 1314 Tenth Street, Suite 130, Huntsville, Texas, 77320, the sum of Two Hundred One Thousand Dollars (\$201,000.00) (Hereinafter, "settlement amount"). The wire transfer will be sent to the Structured Funding Group, Special Account, Account No. 076-448 at the First National Bank of Huntsville, 1300 11th Street, Huntsville, Texas 77320, ABA Routing No. 113104000.

The Structured Funding Group, on behalf of the United States, will pay One Hundred Twenty Eight Thousand Five Hundred Dollars and No Cents (\$128,500.00), payable to Scott Ozmun, attorney, and Ruth Rivera Garza, Individually and as Executrix of the Estate of Jimmy Garza, Deceased, and as Next Friend of Jimmy Junior Garza, Steffane Marie Garza, and Joe Angel Garza and Georgia Rivera Garza, for the up front cash portion of this settlement. The parties agree that any attorneys fees owed by the Plaintiffs on the amount of this settlement that is funded by the United States of America shall not exceed 25% (28 U.S.C. § 2678), and must be paid out of the settlement amount and not in addition thereto.

The Structured Funding Group, on behalf of the United States, will pay Seventy Two Thousand Five Hundred Dollars and No Cents (\$72,500.00) to American General Life Insurance Company to purchase annuity contracts to make the periodic payments specified in paragraph 3(b) of this Stipulation for Compromise Settlement.

(b) The United States of America will purchase annuity contracts to make the following payments:

- (1) To Ruth Rivera Garza, if living, otherwise to the Estate of Ruth Rivera Garza, the following:

Beginning 07/01/2006, the sum of Four Hundred Four Dollars and Thirteen Cents (\$404.13) per month, for 10 years Certain only with the last payment being made on 6/01/2016.

- (2) To Joe Angel Garza, if living, otherwise to the Estate of Joe Angel Garza, the following:

Beginning 07/24/2006, the sum of Two Hundred Ninety-Two Dollars and Seventy-Four Cents (\$292.74) per month, for 5 years Certain only with the last payment being made on 6/24/2011.

- (3) To Jimmy Junior Garza, if living, otherwise to the Estate of Jimmy Junior Garza, the following:

Beginning 09/11/2011, the sum of Three Hundred Eighty-Four Dollars and Ninety Nine Cents (\$384.99) per month, for 5 years Certain only with the last payment being made on 8/11/2016.

The annuity contracts will be owned solely and exclusively by the United States of America and will be purchased as soon as practicable following the execution of this Stipulation for Compromise Settlement and Release. The parties stipulate and agree that the United States' only obligation with respect to said annuity contracts and any annuity payments therefrom is to purchase the annuity contracts, and they further agree that the United States does not guarantee or insure any of the annuity payments. The parties further stipulate and agree that the United States is released from any and all obligations with respect to the annuity contracts and annuity payments upon the purchase of the annuity contracts.

The parties stipulate and agree that the annuity company that issued the annuity contracts or its assignee shall at all times have the sole obligation for making all annuity payments. The obligation of the annuity company to make each annuity payment shall be discharged upon the mailing of a valid check in the amount of such payment to the address designated by the party to whom the payment is required to be made under this Stipulation For Compromise Settlement And Release. Checks lost or delayed through no fault of the annuity company shall be promptly replaced by the annuity company, but the annuity company is not liable for interest during the interim.

The parties stipulate and agree that the annuity payments cannot be assigned, accelerated, deferred, increased or decreased by the parties, that no part of any annuity payments called for herein or any assets of the United States or the annuity company are subject to execution or any legal

process for any obligation in any manner, and that the plaintiffs shall not have the power to sell, assign, mortgage, encumber or anticipate said annuity payments, or any part thereof, by assignment or otherwise.

Plaintiffs and their guardians, heirs, executors, administrators or assigns do hereby agree to maintain with the annuity company and the United States a current mailing address, and to notify the annuity company and the United States of the death of any beneficiary of said annuity contracts within ten (10) days of death.

It is incumbent upon the beneficiaries or administrators of the Estate(s) of the Payees to notify the annuity issuer of the death of any of the Payees. In the event such notice is not given to the annuity issuer, the respective beneficiary or administrators of the Estate of the deceased shall be liable for all monies paid by the annuity issuer beyond the date for which such payments were due.

The annuity issuer reserves the right to require proof of the survival or death of any of the Payees or any Contingent Payee, as the case may be, before making any payment.

If the age or sex of the Payee is found to have been misstated, the life contingent payments specified above will be adjusted to the benefit provided by the original cost based on the correct information.

4. Plaintiffs and their guardians, heirs, executors, administrators, or assigns do hereby accept the cash sums set forth above in paragraph 3(a) and the purchase of the annuity contracts set forth in paragraph 3(b) in full settlement and satisfaction of any and all claims, demands, rights, and causes of action of whatsoever kind and nature, including any future claims for wrongful death and any claims for fees, costs and expenses, arising from, and by reason of, any and all known and unknown, foreseen and unforeseen, bodily and personal injuries, death, or damage to property, and the consequences thereof, which the plaintiffs or their heirs, executors, administrators, or assigns may have or hereafter acquire against the United States, its agents, servants and employees on account of the same subject matter that gave rise to the above captioned action. Plaintiffs and their guardians, heirs, executors, administrators, and assigns do hereby further agree to reimburse,

indemnify and hold harmless the United States and its agents, servants, and employees from and against any and all such claims, causes of action, liens, rights, or subrogated or contribution interests incident to or resulting or arising from the acts or omissions that gave rise to the above captioned action, including claims or causes of action for wrongful death.

5. This compromise settlement is specifically subject to each of the following:

(a) An agreement by the parties on the terms, conditions and requirements of this Stipulation For Compromise Settlement And Release and the annuity contracts. The parties stipulate and agree that the Stipulation For Compromise Settlement And Release and the compromise settlement are null and void in the event the parties cannot agree on the terms, conditions and requirements of this Stipulation For Compromise Settlement And Release and the annuity contracts. The term, conditions and requirements of this Stipulation For Compromise Settlement And Release are not severable and the failure to agree, fulfill or comply with any term, condition or requirement renders the entire Stipulation For Compromise Settlement And Release and the compromise settlement null and void. The authorization by the Attorney General or the Attorney General's designee to negotiate and consummate a settlement for the amount agreed upon by the parties does not make the settlement binding upon the United States unless and until the other terms, conditions and requirements of the Stipulation For Compromise Settlement And Release have been completely agreed upon in writing.

(b) Each beneficiary of the annuity contracts set forth above in paragraph 3(b) must be alive at the time of the purchase of said annuity. In the event of the death of any beneficiary prior to the purchase of said annuity contracts, the entire Stipulation For Compromise Settlement And Release and the compromise settlement are null and void.

(c) To the extent that an Attorney Ad Litem or Guardian Ad Litem is deemed necessary by the Court, any fees or expenses relating to the Attorney Ad Litem or Guardian Ad Litem are to be paid out of the \$201,000.00 settlement amount and not in addition thereto.

6. Plaintiffs' attorney agrees to distribute the settlement proceeds among the plaintiffs and to obtain a dismissal of the above captioned action with prejudice, with each party bearing its own fees, costs and expenses.


7. The parties agree that this Stipulation For Compromise Settlement And Release, including all the terms and conditions of this compromise settlement and any additional agreements relating thereto, may be made public in their entirety, and the plaintiffs expressly consent to such release and disclosure pursuant to 5 U.S.C § 552a (b).

JOHNNY SUTTON
UNITED STATES ATTORNEY

Date: _____

By: _____
R. Barry Robinson
Assistant U.S. Attorney
Attorneys for the Defendant,
United States of America

Date: 3/8/06

By: 
Scott Ozmun
Attorney for Plaintiffs

Date: 3/8/06

By: Ruth Rivera Garza
Ruth Rivera Garza, Individually and
as Executrix of the Estate of Jimmy
Garza, Deceased, And as next friend
of Jimmy Junior Garza and Joe Angel
Garza, a minor

Date: 3/8/06

By: Steffane Marie Garza
Steffane Marie Garza

Date: 3/8/06

By: Georgia Rivera Garza
Georgia Rivera Garza